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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN

13 CHURCH OF SCIENTOLOGY) CASE NO. 157 680
14 INTERNATIONAL, a California not-)
15 for-profit religious corporation,) [CONSOLIDATED]
16)
17) CHURCH OF SCIENTOLOGY
18) INTERNATIONAL'S MEMORANDUM
19) OF POINTS AND AUTHORITIES
20) IN SUPPORT OF EX PARTE
21) APPLICATION FOR AN ORDER
22) STRIKING ARMSTRONG'S
23) EVIDENCE IN SUPPORT OF
24) OPPOSITION TO PLAINTIFF'S
25) PENDING MOTIONS FOR SUMMARY
26) ADJUDICATION, OR, IN THE
27) ALTERNATIVE, FOR AN ORDER
28) SEALING THE FOLLOWING
29) EXHIBITS: VOL. VI, EX.
30) 1(J)(A), EX. 1(J)(M); VOL.
31) VII, EX. 1(J)(M); VOL. IX,
32) EX. 2(A), 2(C), 3(B), 5(B),
33) AND 7(A); REQUEST FOR
34) SANCTIONS [C.C.P. §
35) 437c(i)]
36)
37) DATE: September 19, 1995
38) TIME: 9:30 a.m.
39) DEPT: 1
40)
41) TRIAL DATE: None set

16 Plaintiff,
18 vs.
22 GERALD ARMSTRONG; DOES 1 through
23 25, inclusive,
25 Defendants.

I.

INTRODUCTION

This application seeks to strike ten volumes of evidence late-filed by defendant Gerald Armstrong in support of his opposition to plaintiff's pending motions for summary adjudication or, in the alternative, the sealing of 9 exhibits which contain or consist of plaintiff's confidential scriptures (hereinafter, "the Confidential Exhibits").¹ The ten volumes of exhibits were filed with this Court after the imposed deadline of 10:00 a.m. on Monday, September 18, had passed. [Declaration of Andrew H. Wilson] They consist of a potpourri of declarations previously filed by Armstrong; documents from other cases, some as old as the 1970's; third-party, hearsay declarations; and unabashed argument by Armstrong. They have in common three things: (1) they offer no competent, relevant evidence as to anything placed at issue by the summary adjudication motions; (2) they consist of hate-filled, false accusations of the "badness" of the plaintiff and its faith; and (3) they are offered to support the (non-litigable) proposition that God is on Gerry Armstrong's side. The exhibits in question are not referenced at all in Armstrong's simultaneously-filed memorandum, and they contribute absolutely nothing relevant to the determination of the pending summary adjudication motions.

In the event that the Court does not simply strike the evidence outright, plaintiff seeks to have 9 of the exhibits

¹ The exhibits which plaintiff seeks to seal are: VOL. VI, EX. 1(J)(A), EX. 1(J)(M); VOL. VII, EX. 1(J)(M); VOL. IX, EX. 2(A), 2(C), 3(B), 5(B), AND 7(A).

1 placed under seal pursuant to Civil Code § 3426.5. The exhibits,
2 identified in the Motion as the "Confidential Exhibits," are
3 altered, copied or re-created versions of portions of
4 Scientology's "Advanced Technology," or descriptions of the same:
5 highly sacred scriptures which are maintained by plaintiff as
6 confidential trade secrets. They are not relevant to any matters
7 at issue in the case, and were filed by Armstrong to harass
8 plaintiff and create confusion and delay. They have already been
9 ordered stricken once by this Court, and once by the bankruptcy
10 Court. [Wilson Dec.] As this Court held in September, 1994, "The
11 religious beliefs of the parties are irrelevant in determining
12 the issues in this action."

13 Plaintiff requests that, if this Court does not strike the
14 evidence in its entirety, that the Court maintain the
15 Confidential Exhibits under seal. Plaintiff also requests that
16 sanctions be imposed against Armstrong, in light of his obvious
17 and calculated bad faith re-filing of the Confidential Exhibits.

18 II.

19 THE EVIDENCE WAS NOT FILED OR SERVED IN A TIMELY
20 FASHION, AND OFFERS NO EVIDENCE THAT IS RELEVANT TO
21 PLAINTIFF'S SUMMARY ADJUDICATION MOTION

22 Code of Civil Procedure § 437c(b) provides in relevant part
23 that, "Any opposition to [a motion for summary adjudication]
24 shall be served and filed not less than 14 days preceding the
25 noticed or continued date of the hearing, unless the court for
26 good cause orders otherwise."

27 Plaintiff's summary adjudication motions have been pending
28 with this Court since February, 1995. They were fully briefed by
April, 1995, and this Court was ready to rule. Armstrong had

1 delayed the hearing of the motions for months by firing his
2 attorney (Mr. Greene), and then obtaining extensions of time in
3 which to respond. Apparently still unhappy with his defense,
4 Armstrong further delayed the hearings by filing for bankruptcy
5 on the day this Court was due to issue its tentative ruling. Now
6 that his bankruptcy ploy has failed, Armstrong has miraculously
7 obtained the funds to re-hire Mr. Greene.

8 Nonetheless, this Court generously permitted Armstrong to
9 file still additional papers with the Court, and to do so fewer
10 than 14 days before the re-scheduled hearing. However,
11 Armstrong's counsel asserted that he intended only to file a
12 memorandum of points and authorities, which Armstrong had not
13 filed previously. He was ordered to serve and file it by 10:00
14 a.m. on September 18.

15 Armstrong did not file anything on the morning to September
16 18 [Wilson Dec.]. Instead, he served on plaintiff's counsel ten
17 volumes of additional, extraneous "evidence," much of which had
18 already been filed in response to other pleadings in this case,
19 and some of which had previously been stricken by this Court.

20 Moreover, the vast majority of the "evidence" is not
21 mentioned by Armstrong's attorney anywhere in the opposing
22 memorandum. Instead, the documents focus on Armstrong's
23 religious beliefs and what he contends are the religious beliefs
24 of plaintiff.² However, this Court has already held that the

25
26 ² For example, Armstrong devotes a substantial portion of his
27 assorted declarations to (1) insisting that Scientology theology
28 preaches that God does not exist (it does not); (2) arguing that
Scientology is not a religion but "idolatry" (all courts and even
(continued...))

1 religious beliefs of the parties are not relevant to this action.
2 For this reason alone, the evidence should be stricken.

3 The exhibits which Armstrong alone purports to authenticate,
4 are also inadmissible as evidence. C.C.P. § 437c(d) provides, in
5 relevant part, that

6 Supporting and opposing affidavits or declarations
7 shall be made by any person on personal knowledge,
8 shall set forth admissible evidence, and shall show
9 affirmatively that the affiant is competent to testify
10 to the matters stated in the affidavits or
11 declarations.

12 Armstrong's authenticating declaration, exhibit 1, is
13 virtually a word-processed expansion of the same declaration
14 which he offered to this Court in January, and which this Court
15 ordered stricken. Armstrong does not aver that his declaration
16 [Exhibit 1] is made on personal knowledge, which the statute
17 plainly requires. Further, much of the declaration is hearsay --
18 Armstrong's testimony as to what God purportedly said to him.
19 Finally, the declaration lacks any showing that Armstrong is
20 competent to testify about the matters contained in the
21 declaration. If anything, the declaration casts serious doubt on
22 whether Armstrong is competent as a witness.

23 In short, the evidence was late-filed, beyond the time
24 permitted by the Court, and no good cause exists to permit it to
25 be considered. It should, accordingly, be stricken.

26 III.

27 IN THE ALTERNATIVE, THE COURT SHOULD SEAL THE

28 _____
29 ²(...continued)
30 the IRS disagree with that characterization); and (3) proclaiming
31 that he alone understands and is following Scientology's creed.
32 None of these matters has any bearing on whether or not Armstrong
33 breached his settlement agreement with plaintiff.

1 CONFIDENTIAL EXHIBITS BECAUSE THEY ARE RE-CREATED
2 VERSIONS OF PLAINTIFF'S TRADE SECRETS

3 Armstrong and other declarant claim that Exhibits 1(J)(A),
4 1(J)(M), 2(C), 3(B) and 5(B) are copies of "OT III" and/or "Upper
5 Level" materials.³ "Upper Level" scripture (known as the
6 "Advanced Technology") is scripture which is the product of some
7 of L. Ron Hubbard's advanced researches into the human spirit.
8 The designation "OT III" stands for "Operating Thetan, Level 3,"
9 and is part of Scientology's Advanced Technology.⁴ Scientology
10 theology provides that the Advanced Technology is kept
11 confidential, and disclosed to Scientology parishioners only when
12 those parishioners have completed the earlier necessary steps in
13 Scientology's path to greater spiritual awareness. The
14 Confidential Exhibits are re-created versions of trade secrets
15 that are kept confidential by the Church, and that must not be
16 kept in the Court's public files.

17 The California Civil Code provides that trade secrets, or
18 even matters alleged to be trade secrets, must be protected while
19 they are involved in litigation:

20 In an action under this title, a court shall
21 preserve the secrecy of an alleged trade secret by
22 reasonable means, which may include granting protective
23 orders in connection with discovery proceedings,
24 holding in-camera hearings, sealing the records of the

25

26 ³ Exhibits 2(A) and 7(A) contain lengthy descriptions of the
27 confidential works, including some trade secrets.

28 ⁴ Scientologists refer to the person himself, the being, as a
 "thetan." The definition of the state of "Operating Thetan" is
 "knowing and willing cause over life, thought, matter, energy,
 space and time." To be permitted access to the confidential
 Advanced Technology, through which a person achieves the state of
 Operating Thetan, the person must progress first through all the
 lower, gradient levels of Scientology religious counseling.

1 action, and ordering any person involved in the
2 litigation not to disclose an alleged trade secret
without prior court approval.

3 Civil Code § 3426.5 (emphasis supplied).

4 Armstrong has filed the Confidential Exhibits in this
5 Court's public files solely to harass plaintiff. He is well
6 aware of plaintiff's interest in the documents as trade secrets.
7 Indeed, the materials in question have been judicially recognized
8 as trade secrets under Civil Code § 3426.1 in Bridge Publications
9 Inc. v. Vien (S.D.Cal. 1993) 827 F.Supp. 629 at 633, citing
10 Religious Technology Center v. Scott (9th Cir. 1989) 869 F.2d
11 1306, 1309-10 (holding that the Advanced Technology can be
12 protectable as a trade secret).⁵ The documents in Armstrong's
13 Confidential Exhibits are re-creations of portions of Advanced
14 Technology which the Vien court has already adjudicated to be
15 trade secrets as a matter of law.

16 Armstrong's interjections of these materials into the
17 Court's files is objectionable not merely because they are trade
18 secrets, but also because a church has a generalized interest in
19 maintaining confidentiality of internal documents both for itself

20
21 ⁵ In Vien, the Court granted summary judgment for trade secret
22 misappropriation, finding these confidential scriptures to be
23 trade secrets as a matter of law. Id. at 633. The Vien court
24 specifically recognized that the confidentiality and security
25 requirements of Civil Code § 3426.1 had been met with respect to
26 the Advanced Technology, and that it had independent economic
27 value. 827 F.Supp. at 633, quoting Murdock v. Commonwealth of
28 Pennsylvania (1943) 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87
L.Ed. 1292; Cal. Civ. Code § 3426.1(d). While there is other
litigation pending in several districts with respect to the trade
secret status of these materials, the Vien case is the only case
which has reached a final and binding judgment. In no case has a
court failed to seal or strike the materials from the public
record.

1 and its parishioners. U.S. v. Hubbard (D.C.Cir. 1980) 650 F.2d
2 293, 306-07. The Confidential Exhibits are not the subject of
3 this litigation. Armstrong's counsel, Mr. Greene, acknowledged
4 this, and told plaintiff's counsel that he had instructed
5 Armstrong not to file them. Armstrong did so anyway. Armstrong
6 obviously has filed these documents intentionally only because he
7 knows it will upset plaintiff's parishioners and staff. The
8 Confidential Exhibits are or contain trade secrets, and if they
9 are not stricken entirely by the Court, they at least should be
10 placed under seal.

11 IV.

12 ARMSTRONG SHOULD BE SANCTIONED

13 Code of Civil Procedure Section 437c(i) provides in relevant
14 part that,

15 If the court determines at any time that any of
16 the affidavits are presented in bad faith or solely for
17 the purposes of delay, the court shall order the party
18 presenting the affidavits to pay the other party the
19 amount of the reasonable expenses which the filing of
20 he affidavit caused the other party to incur.

19 Here, plaintiff's counsel, Mr. Wilson, discussed the matter
20 of confidential exhibits with Mr. Greene. Armstrong had filed
21 copies of confidential materials gratuitously in the past, and
22 Mr. Wilson sought an assurance from Mr. Greene that no such
23 documents would be a part of this intended filing. Mr. Greene
24 gave Mr. Wilson that assurance. [Wilson Dec.] Had he not done
25 so, Mr. Wilson would have sought an order from the Court
26 preventing the filing of such documents, or, in the alternative,
27 having them filed only under seal. [Id.] When Mr. Wilson
28 received the evidence, and realized that it consisted entirely of

1 irrelevant diatribes and confidential material, he gave Mr.
2 Greene notice of this hearing. Mr. Greene responded with a voice
3 mail message for Mr. Wilson which stated that he would appear for
4 the hearing, and that he did not understand what the problem was
5 because he had instructed Armstrong to remove the confidential
6 materials before serving and filing the papers. [Id.] Thus,
7 Armstrong's own attorney has admitted that the Confidential
8 Exhibits are not relevant to any pending matter, and should not
9 have been filed at all. Armstrong plainly served and filed them
10 in bad faith, causing plaintiff to bring this motion at
11 substantial expense. He should be sanctioned pursuant to C.C.P.
12 § 437c(i).

13 IV.

14 CONCLUSION

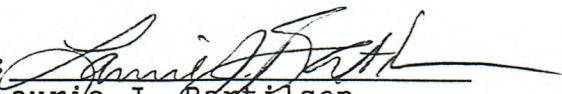
15 The evidence filed by Armstrong is untimely, irrelevant, and
16 seeks to expose plaintiff's trade secrets. Plaintiff asks this
17 Court to strike the evidence or, in the alternative, place the
18 Confidential Exhibits under a protective seal. Plaintiff also
19 requests that Armstrong be sanctioned under C.C.P. § 437c(i).

20 Dated: September 19, 1995

Respectfully submitted,

21
22 Andrew H. Wilson
WILSON, RYAN & CAMPILONGO

23 MOXON & BARTILSON

24
25 By: 
26 Laurie J. Bartilson
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27 CHURCH OF SCIENTOLOGY INTERNATIONAL
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